

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS

APPLICANT: NOCERA, Carmelo; CECCONI, Vito

SERIAL NO.: 10/518,984

ART UNIT: 1722

FILED: June 23, 2005

EXAMINER: Fetsuga, R. M.

TITLE: SIPHON FOR SINK OR SIMILAR ELEMENT

APPLICANT'S BRIEF IN SUPPORT OF APPEAL

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the Final Rejection of Claims 14-16.

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CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

I hereby certify that the attached correspondence comprising:

APPEAL BRIEF

is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P. O. Box 1450
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on January 2, 2007.

Respectfully submitted,

| | |
|------------------------|---|
| <u>January 2, 2007</u> | <u>/Andrew W. Chu/</u> |
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REAL PARTY IN INTEREST

The persons named in the caption, Mr. Carmelo NOCERA and Mr. Vito CECCONI, are the inventors. There has been no assignment yet. These inventors are the real party in interest in the present appeal.

RELATED APPEALS AND INTERFERENCES

There are no other related appeals or interferences known to Applicant which will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

STATUS OF CLAIMS

Originally, Claims 1 - 8 were filed in this case as a national stage entry on December 21, 2004. The filing requirements were completed and an effective filing date of June 23, 2005 was provided for this national stage application.

After the first Office Action of November 1, 2005, Applicant traversed the rejection by incorporating Claim 1 and 2 into new independent Claim 9. The Examiner indicated that the subject matter of Claim 2 was allowable, if rewritten in independent format. There was an indefiniteness rejection of Claim 2, that was also addressed by the amendment. Claims 1-8 were canceled, and corresponding dependent claims were submitted, such that Claims 9-13 remained pending for consideration by the Examiner.

A Final Action was sent on March 13, 2006, indicating that independent Claim 9 did not contain enough limitations to distinguish the prior art. The key issue was the claim language for the

"snapping" engagement in the locking means. Applicant responded with another amendment, concurrent with a Request for Continued Examination. This amendment canceled Claims 9-13 and substituted Claims 14-16. New independent Claim 14 incorporated Claims 9 and 10, including further limitations on the structure of the locking means. The new independent Claim 14 incorporated more limitations than the previously pending claims.

Another Final Action, on August 1, 2006, rejected Claims 14-16. The Action was made final because no new issues were being raised by the previous amendment. In response, Applicant filed the present appeal and submitted a concurrent amendment to place Claims 14-16 into a condition for appeal.

Claims 1-13 are currently rejected.

Claims 14-16 are the claims at issue in the present appeal.

STATUS OF AMENDMENTS

An amendment has been concurrently filed on December 29, 2006 with the present Appeal Brief, subsequent to the Final Rejection of August 1, 2006. The amendment places Claims 14-16 into a condition for appeal.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention discloses a water trap for a sink, including an upper portion, a pivoting lower portion, linking means between the lower and upper portions, a sealing joint and a locking means. The linking means includes at least one hinge enabling the lower portion to pivot around the axis of the hinge. The linking means centers the lower portion onto the upper portion. The locking

means between the lower and upper portions compresses the sealing joint when both portions are linked. The invention is applied in the field of waste water evacuation devices.

The sole independent claim discloses the water trap 1 for a sink. The upper portion 2 and the lower portion 3 pivotally connected to the upper portion 2 are shown in Figure 1. The sealing joint 5, shown in Figure 1, is a The linking means 4 is positioned between the upper portion and the lower portion to center the upper portion with respect to the lower portion, as shown in Figures 1 and 2 with the reference numerals as provided herein and are described in the specification on pages 4-5, Paragraphs [0023] to [0028]. This discussion of the linking means specifically recites at least one hinge able to be dismantled and separated from the portions of the water trap. The locking means 8 is mounted to the upper portion and the lower portion for locking the portions together, as shown in Figures 1 and 2 with the reference numerals as provided herein and described in the specification on pages 4-5, Paragraphs [0029] to [0032]. The locking means is specifically described as being formed of a clip, forcing the portions together by snapping. The locking means includes a base, a stud and a locking element. These three elements are described in Paragraph [0030].

The "means + function" terms of the present invention are described in detail and identified as follows:

| Claim | term | specification and drawings |
|-------|---------------|--|
| 14 | linking means | Figures 1 and 2, reference numeral 4; specification, Paragraphs [0023] to [0028]. |
| 14 | locking means | Figures 1 and 2, reference numerals 8, 13, 14, and 15; specification, Paragraphs [0029] to [0032]. |

Additional references to secondary structures of the linking means and the locking means are

contained throughout the specification, including a brief description of the structures in the summary section of the specification.

GROUND OF REJECTION
TO BE REVIEWED ON APPEAL

In the Final Office Action of August 1, 2006, it was indicated that Claims 14-16 were rejected under 35 U.S.C. § 102(b) as being anticipated by the Shinn patent and under 35 U.S.C. § 103(a) as being unpatentable over the Shinn patent. The Final Rejection was based upon a repeated rejection on failing to distinguish the claimed subject matter from the prior art Shinn patent. Claims 14-16 have also been rejected under 35 U.S.C. §112, first paragraph for failing to comply with the written description requirement.

ARGUMENT

I. OVERVIEW

Applicant amended the independent claim to recite the limitation of the locking element having a curved edge and stop abutment and being in snapping engagement for the portions of the water trap.

The invention of Claim 14 is not anticipated by the Shinn patent. The invention of Claim 14 is not made obvious by the Shinn patent.

Furthermore, Claim 14 has been amended by a concurrent amendment under 37 C.F.R. § 1.116 and 37 C.F.R. § 41.33 to satisfy the written description requirement. The rejection under 35 U.S.C. §112, first paragraph is no longer an issue for the present appeal.

II. THE INVENTION IS NOT ANTICIPATED BY THE SHINN PATENT

Prior art references are used to determine whether an invention is novel. Specifically, 35 U.S.C. §102 addresses the issue of novelty by determining if prior art references anticipate the claims of the invention. In the present case, 35 U.S.C. §102(b) applies to the Shinn patent to the present invention. 35 U.S.C. §102(b) states:

"A person shall be entitled to a patent unless--
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States..."

In determining the propriety of the Patent Office's position as to anticipation, it is necessary to ascertain whether the Shinn patent teaches all of the elements of the claim invention. Currently pending and amended independent Claim 14 is no longer anticipated by the Shinn patent because the locking means is not disclosed by the prior art.

The locking means in the Shinn patent includes a latch having a pivot pin 35 about which a lever 36 is pivotally mounted at its lower end (see column 4, lines 25 - 27). This lever plate 36 is actually located at an upper part of the drain trap apparatus. The Shinn patent also includes a latch rod 37 and a fixed loop 38. The latch rod 37 is linked to the lever plate 36. A latch member 17b is attached to the lower portion of the drain trap. It is configured in the form of a hook that is cooperative with the fixed loop and the latch rod 37.

The locking means of the present invention includes a base, a stud, and a locking element. The Examiner has previously stated that these elements are taught by the lever plate 36, latch member 17b, and fixed loop 38, respectively. As now claimed, the locking element of the present invention is no longer anticipated by the fixed loop 38 because the proper recitations of the locking

element are now incorporated in the claim language. The locking element of the locking means recites a "curved edge" as disclosed as part of Figure 1 and reference numeral 15. Furthermore, there is a "stop abutment" as discussed as "stop 16" in the specification and shown in Figure 1. These structures and their relationship to the stud and base of the locking means are not disclosed by the structures, such as the fixed loop, of the Shinn patent.

The structures of the locking element are important for the innovative "snapping" engagement of the locking means. Applicant respectfully contends that the subject matter of a "snapping" engagement of the locking means was determined to be patentable over the Shinn patent ever since the first consideration by the Examiner. See Office Action of November 1, 2005, Paragraph 12 stating that Claim 2 is free of the prior art. Claim 14, as now claimed, properly recites the structures that allow for the "snapping" relationship discussed throughout the specification.

The Shinn patent has no structure analogous to the "snapping" interrelationship of the locking element of the present invention. The hooking action of the fixed loop and latch member do not involve forcibly snap closing the locking means as now claimed. A force-based snapping relationship between the elements of the locking means is not anticipated by the hook and loop elements of the Shinn patent. The fixed loop and latch member do not anticipate the structures as now claimed.

Furthermore, no new matter has been added by these amendments, and no new search is required by the addition of these limitations because the locking element of the locking means has been disclosed since entry into the national stage. No new search is required for consideration of the locking means, as now claimed.

III. THE INVENTION IS NOT MADE OBVIOUS BY THE SHINN PATENT

In determining the propriety of the Patent Office's position as to obviousness in the first instance, it is first necessary to ascertain whether or not the referenced teaching would appear to be sufficient to one of ordinary skill in the relevant art knowing the reference before him to make the proposed substitution, combination, or other modification. In re Lintner, 458 F.2d 1013, 1016, 173 U.S.P.Q. 560 (C.C.P.A. 1972). A conclusion of obviousness may not be based on an impermissible hindsight reconstruction of the art. Application of Van Wanderhaim, 378 F.2d 981 (C.C.P.A. 1967). It is insufficient to show merely that each separate element of a claimed invention can be found in one or various prior art references. Canadian Ingersoll-Rand Co. v. Peterson Products, Inc., 223 F.Supp. 803, 139 U.S.P.Q. 61 (N.D. Cal. 1963). There should be some teaching, or at least suggestion, in the prior art that the individual elements can, or should, be combined as claimed. In re Regel, 526 F.2d 1399, 1403, 188 U.S.P.Q. 136 (C.C.P.A. 1975).

In the present case, there is no teaching for one skilled in the art to move from the hook and latch of the Shinn patent to the forced snapping locking of the present invention as now claimed. As previously discussed, Applicant has been attempting to amend the claims for suitable claim language to embody allowable claim terms for the "snapping" engagement of the portions by the locking means. See Amendment A of January 27, 2006 and Amendment B of June 16, 2006. The quick snapping action and required force are not made obvious by the Shinn patent.

The locking means of the Shinn patent does not suggest the structures of the present invention as now claimed. The latch rod 37 of the Shinn patent does not require force because the length of the latch rod 37 is set. There is no force or snapping suggested by the engagement of the structures of the locking means of the Shinn patent because the structures are not subject to variable

force or pivoting deformation.

Applicant respectfully contends that the locking means disclosed in the Shinn patent is quite different from the locking means as defined by independent Claim 14 as now claimed. The locking means of the present invention includes a base that is connected to an upper part of the drain trap, a stud that extends outwardly of the other portion of the water trap, and a locking element 15 that is linked in a pivoting manner to the base 13 and engaged with the stud 14 by a curved surface and stop abutment. The curved surface and stop abutment account for the force requirement and "snapping" engagement by the locking means for the upper and lower portions. These structures contrasts the locking means of the Shinn patent which includes the latch plate 36 joined to the upper part of the drain trap, the latch rod 37 joined to the latch plate 36 and the fixed loop 38.

In operation, the present invention locks the upper and lower portions by force and by snapping around a curved surface to the stop abutment. The Shinn patent has the set length of the latch member 17b of the drain to determine the strength of the sealing closure without relation to any required or variable force. Furthermore, the Shinn patent achieves the centered locking of the portions through a multiple step process with alignment of a rod, a hook and a latch rather than a snap-fit engagement between the stud and the stop abutment. On this basis, Applicant contends that independent Claim 14 is patentably distinguishable from the features disclosed in the Shinn patent.

Applicant has canceled the "cooperative with" language from Claim 14 so as to more particularly define the snapping engagement of the locking means. In this manner, the present invention carries out the force-required snapping function to achieve locking that is neither shown nor suggested by the Shinn patent.

IV. THE SPECIFICATION AND CLAIMS SATISFY THE WRITTEN DESCRIPTION REQUIREMENT

The concurrently amended claim now recites the "a locking means mounted to said upper portion and said lower portion for locking said upper portion to said lower portion". The specification adequately discusses this subject matter such that the application satisfies the written description requirement of 35 U.S.C. §112, first paragraph. One of ordinary skill in the art would understand the references to this limitation and the particular range at issue has also been explicitly disclosed in the specification.

Applicant has canceled the "one of said upper portion and said lower portion" because the locking means is shown in Figures 1 and 2 as being attached to both portions. Applicant respectfully contends that the elements of the locking means can be split across the upper portion and lower portion in different order, but the locking means must be mounted on both portions in order to function. As such, the problematic language has been canceled.

Applicant has filed the concurrent amendment to remove the rejection based upon 35 U.S.C. §112, first paragraph, from the issues on appeal.

V. SUMMARY

Based upon the foregoing analysis, it is Applicants' contention that Claims 14-16 of the present invention are patentably distinguishable from the prior art Shinn patent.

The foregoing Brief is intended to assist the Board of Appeals in examining the application and, in the course of explanation, may employ shortened or more specific or variant descriptions of some of the claim language. Such descriptions are not intended to limit the scope of the claims; the actual claim language should be considered in each case. Furthermore, the remarks are not

considered to be exhaustive of the facets of the invention which render it patentable, being only examples of certain advantageous features and differences which Applicants' attorney chooses to mention at this time. The required fee for transmittal of the appeal brief is enclosed herewith.

Applicant believes that no extension of time fees are currently due under MPEP § 1205.01, being due two months after the Notice of Appeal, on a Sunday, after a national holiday, and after a day of closure due to national observance. Alternatively, any additional extension of fee due under 37 C.F.R. § 1.136(a) may be charged to Deposit Account 080879.

Reconsideration of the application, as amended, and allowance hereof are respectfully requested.

Respectfully submitted,

January 2, 2007

Date

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CLAIMS APPENDIX

1-13. (Canceled).

14. A water trap for a sink comprising:

an upper portion;

a lower portion pivotally connected to said upper portion;

a linking means positioned between said upper portion and said lower portion, said linking means for centering said upper portion with respect to said lower portion;

a sealing joint in sealing relation to said upper and lower portion, said linking means comprising:

at least one hinge connected to said lower portion so as to allow said lower portion to pivot around an axis of the hinge, the hinge being dismantlable so as to separate said lower portion from said upper portion; and

a locking means mounted to said upper portion and said lower portion for locking said upper portion to said lower portion, said locking means formed of a clip, said locking means for compressing said sealing joint when said upper portion is engaged with said lower portion, said upper portion and said lower portion being forced together by snapping said locking means, said locking means comprising:

a base connected to one of said upper and lower portions; and

a stud extending outwardly of the other of said upper and lower portion, said clip having a locking element having a curved edge and stop abutment, said clip being pivotally mounted to said base such that said curved edge of said locking element engages said stud, locking element being in snapping engagement with said stud at said stop abutment.

15. The water trap of Claim 14, said clip and said hinge being formed of a polymeric material.

16. The water trap of Claim 14, said upper portion having a rim at a bottom thereof, said lower portion having a rim at a top thereof, one of the rims being engaged within the other of the rims so as to center said upper portion with respect to said lower portion.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.